

JUL 10 1969

JOHN F. DAVIS, CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 776

UTAH PUBLIC SERVICE COMMISSION,	}
<i>Appellant,</i>	
VE.	
EL PASO NATURAL GAS COMPANY, et al,	}
<i>Appellees.</i>	

On Appeal from the United States District Court  
for the District of Utah

## Petition for Modification of The Public Utilities Commission of the State of California

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Utilities Commission of  
the State of California*

Dated: July 9, 1969

oil & gas company

1912

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No. 776

UTAH PUBLIC SERVICE COMMISSION,  
*Appellant,*

vs.

EL PASO NATURAL GAS COMPANY, et al,  
*Appellees.*

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## Petition for Modification of The Public Utilities Commission of the State of California

The Public Utilities Commission of the State of California (California PUC), intervenors in this matter before the United States District Court, hereby petitions this Honorable Court to modify its order vacating the judgment of the United States District Court and remanding the cause for further proceedings.

The California PUC is a regulatory body charged with the responsibility of protecting the interests of California

ratepayers. We participated actively in these proceedings before the United States District Court in order to assure that the decision by that District Court would not adversely affect the rates and service of California ratepayers. In our brief to the District Court we emphasized the fact that California gas utilities, and through them, California gas consumers will continue to be customers of El Paso Natural Gas Company (El Paso) after divestiture. Thus, we contended that the District Court must frame its decree in such manner as to place any adverse impact of its decree on El Paso's shareholders rather than its customers. (Brief dated April 15, 1968.) On the basis of the record before the District Court we were satisfied that the California consumers were protected.

This effort of the California PUC is compatible with the goals of the Supreme Court as stated in *Cascade Natural Gas Corporation, et al., v. El Paso Natural Gas Company*, 386 U.S. 129, 135 (1967):

"In the present case protection of California interests in a competitive system was at the heart of our mandate directing divestiture. For it was the absorption of Pacific Northwest by El Paso that stifled that competition and disadvantaged the California interests. It was indeed their interests, as part of the public interest in a competitive system, that our mandate was designed to protect."

No protection of California's interests will have been obtained if El Paso emerges from the proceedings unable to meet existing gas service obligations to California.

The purpose of this filing is neither to urge the Court to rehear its Opinion of June 16, 1969, nor to further delay divestiture proceedings. Our purpose is to urge the Court to clarify its mandate as to the range of flexibility the Dis-

strict Court may exercise in fashioning a decree that will protect the interests of the California consumers as present and future customers of El Paso and as potential customers of New Company.

The California PUC wishes to make it abundantly clear that it does not take issue with the Court's determination that, "Retention by El Paso and its stockholders of the preferred stock is perpetuation to a degree of the illegal intercorporate community." (Opinion, p. 7.) Similarly, we are not concerned with this Court's requirement of a cash sale, since the effect of this requirement must fall on El Paso's shareholders, not its ratepayers. The California PUC also does not oppose the Court's reopening of the proceeding to permit other applicants for acquisition to compete for the right to purchase New Company, since this also should not, in and of itself, affect rates or service to California.

The California PUC is concerned about the effect of a new allocation of reserves between New Company and El Paso and the Court's statement that, "Assumption of \$170,000,000 of El Paso's indebtedness helps keep the two companies in league." (Opinion, p. 7.)

El Paso is now supplying California with gas from reserves which are essentially those it would have retained after divestiture under the vacated decree. The record below indicated that El Paso could have met its then existing gas service agreements with California utilities. Since the issuance of the decree below El Paso has received a certificate from the Federal Power Commission to increase its sales to California utilities by 250 million cubic feet per day. *El Paso Natural Gas Co.*, Opinion No. 549, .....FPC .....(Oct. 30, 1968). It has recently filed an application to the Federal Power Commission to sell an additional 200 million cubic feet per day through existing facilities to

the ever-growing California market. *El Paso Natural Gas Co.*, Docket No. CP69-348. There has been no record made as to El Paso's ability to meet its new gas service obligations if more reserves are to be allocated to New Company. It is imperative that the District Court not feel constrained to allocate gas reserves in a manner which may curtail the presently anticipated gas service to California for 1969 and 1970.

Due to the high interest cost currently facing borrowers of debt money, the transfer of \$170,000,000, or some lesser amount, of El Paso's total indebtedness would be of material benefit to New Company in rendering service at the lowest possible rates. This Court is certainly aware of the fact that the major sources of debt money for natural gas pipelines are limited. In general, the lenders of debt money would be the same for New Company, whether new debt issues are financed at today's astronomic interest rates or New Company acquires a portion of El Paso's total indebtedness, which presently covers the facilities serving California and New Company, at an interest rate similar to that charged El Paso. Under either circumstance the indenture provisions must be separately negotiated. Should the new record indicate that the cheapest source of debt financing to New Company is a transfer of a portion of the outstanding obligations of El Paso, it would be unfortunate to handicap New Company with a cost of debt that might preclude economic competition for service to California or increase the cost of gas to California ratepayers prior to certification and construction of a new pipeline to California. Neither the California interests nor New Company would benefit by this result. The District Court must not feel compelled to require new debt issuance if no anti-competitive effect is proven by a cheaper method of financing.



This Court's Opinion of June 16, 1969, has made it abundantly clear that, "... the pinch on private interests is not relevant to fashioning an anti-trust decree, as the public interest is our sole concern." (Opinion, p. 7.) The objective of the California PUC is to make certain that the hurt from this pinch stays with El Paso, and is not passed along to the innocent California customers. Modification of this Court's Opinion of June 16, 1969 in the manner requested by the California PUC will further insure that the District Court and all other governmental bodies who may eventually cope with some aspect of these proceedings will pursue these same goals.

WHEREFORE, California PUC petitions the Court to modify its mandate herein to indicate to the District Court that the determination of the proper allocation of gas reserves and methods of debt financing must be made in such manner as will not disadvantage the California interests whom the Court desired to protect.

Respectfully submitted,

/s/ MARY MORAN PAJALICH  
Mary Moran Pajalich  
*Chief Counsel*

/s/ SHELDON ROSENTHAL  
Sheldon Rosenthal  
*Principal Counsel*

5072 State Building  
San Francisco, California 94102

*Attorneys for the Public  
Utilities Commission of  
the State of California*

Dated: July 9, 1969

I hereby certify that the foregoing Petition for Modification is made in good faith and not for delay and is restricted to the grounds above specified.

/s/ SHELDON ROSENTHAL  
Sheldon Rosenthal





# PETITION FOR REHEARING

FILED  
JUL 10 1969

JOHN F. DAVIS, CLERK

**IN THE SUPREME COURT  
OF THE UNITED STATES**

OCTOBER TERM, 1968

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*vs.*

EL PASO NATURAL GAS COMPANY, ET AL.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF UTAH

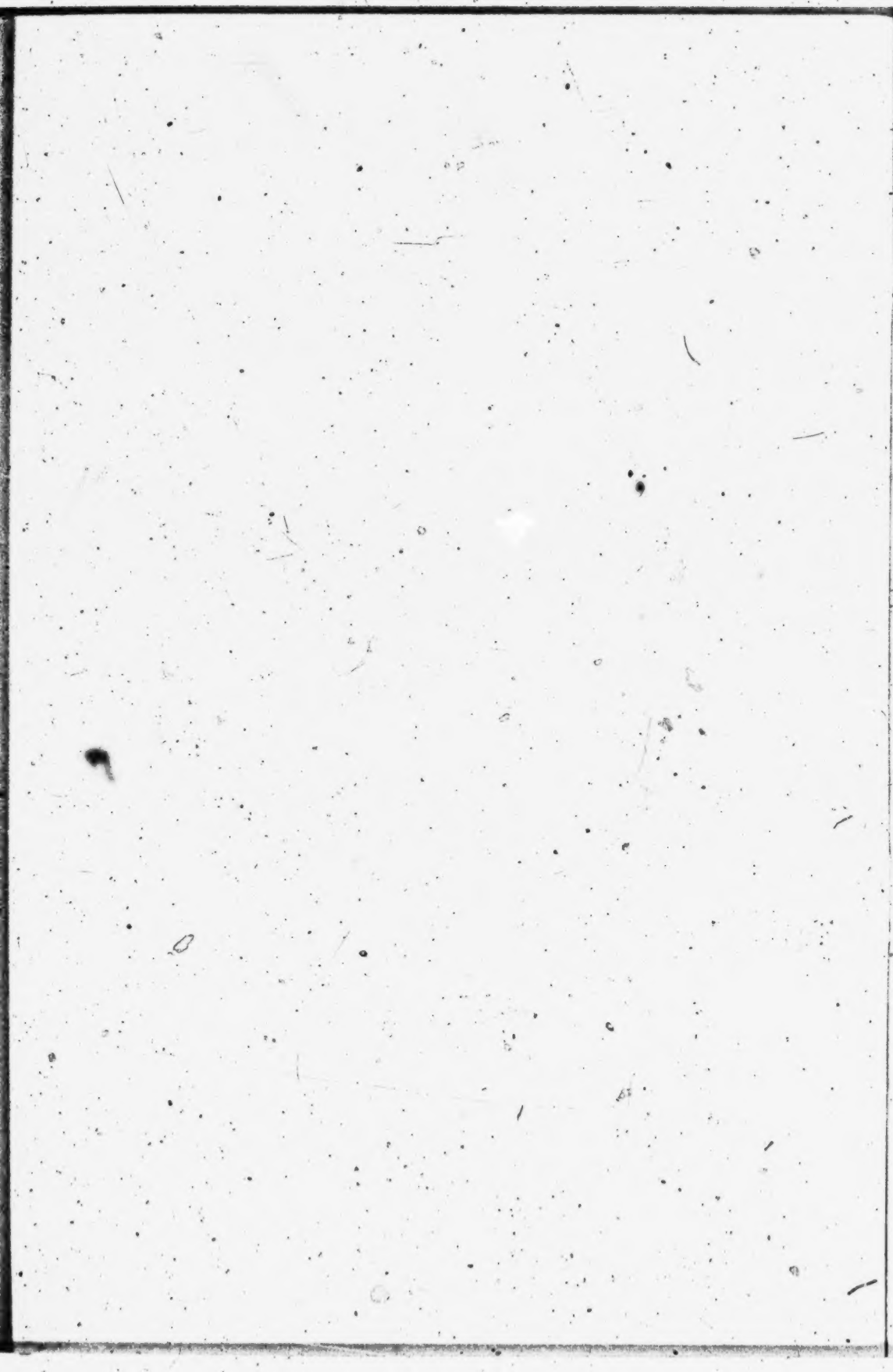
PETITION FOR REHEARING

VERNON B. ROMNEY

Attorney General, State  
of Utah

Attorney for Appellant, Utah  
Public Service Commission

236 State Capitol  
Salt Lake City, Utah



# IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

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UTAH PUBLIC SERVICE COMMISSION,

*Appellant,*

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## PETITION FOR REHEARING

Comes now Utah Public Service Commission, appellant herein, and petitions the Court for a rehearing in the above entitled cause, and in support thereof respectfully shows:

## GROUND'S FOR REHEARING

### I

The refusal of the Court to dismiss the appeal of appellant, Utah Public Service Commission, on its own motion, is not in accordance with the Rules of the Supreme Court and, in particular, with Rule 60.

### II

The decision upon which rehearing is sought by appellant was made without a substantial hearing being had on the merits,

with the result that important matters were not brought to the attention of the Court.

### III

The decision will impose a further substantial delay in the ultimate determination of the case with the resultant possibility of injury to many interests involved, including those of the State of Utah.

### IV

The requirement that a "cash sale" be made to fulfill the requirement of complete divestiture is not in accordance with the public interest inasmuch as present interest rates are such as to place upon the new company a tremendous and possibly even prohibitive financial burden, the effect of which will be to substantially raise rates for customers of the system, including those in Utah.

### V

The likely increase in gas prices may negatively affect the ability of gas to compete with other fuels.

### CONCLUSION

For the foregoing reasons it is respectfully urged that this Petition for Rehearing be granted and that upon further consideration the appeal of the State of Utah be dismissed as heretofore prayed.

Respectfully submitted

UTAH PUBLIC SERVICE  
COMMISSION

By \_\_\_\_\_  
VERNON B. ROMNEY  
Attorney General, State of Utah  
Attorney for Appellant, Utah  
Public Service Commission



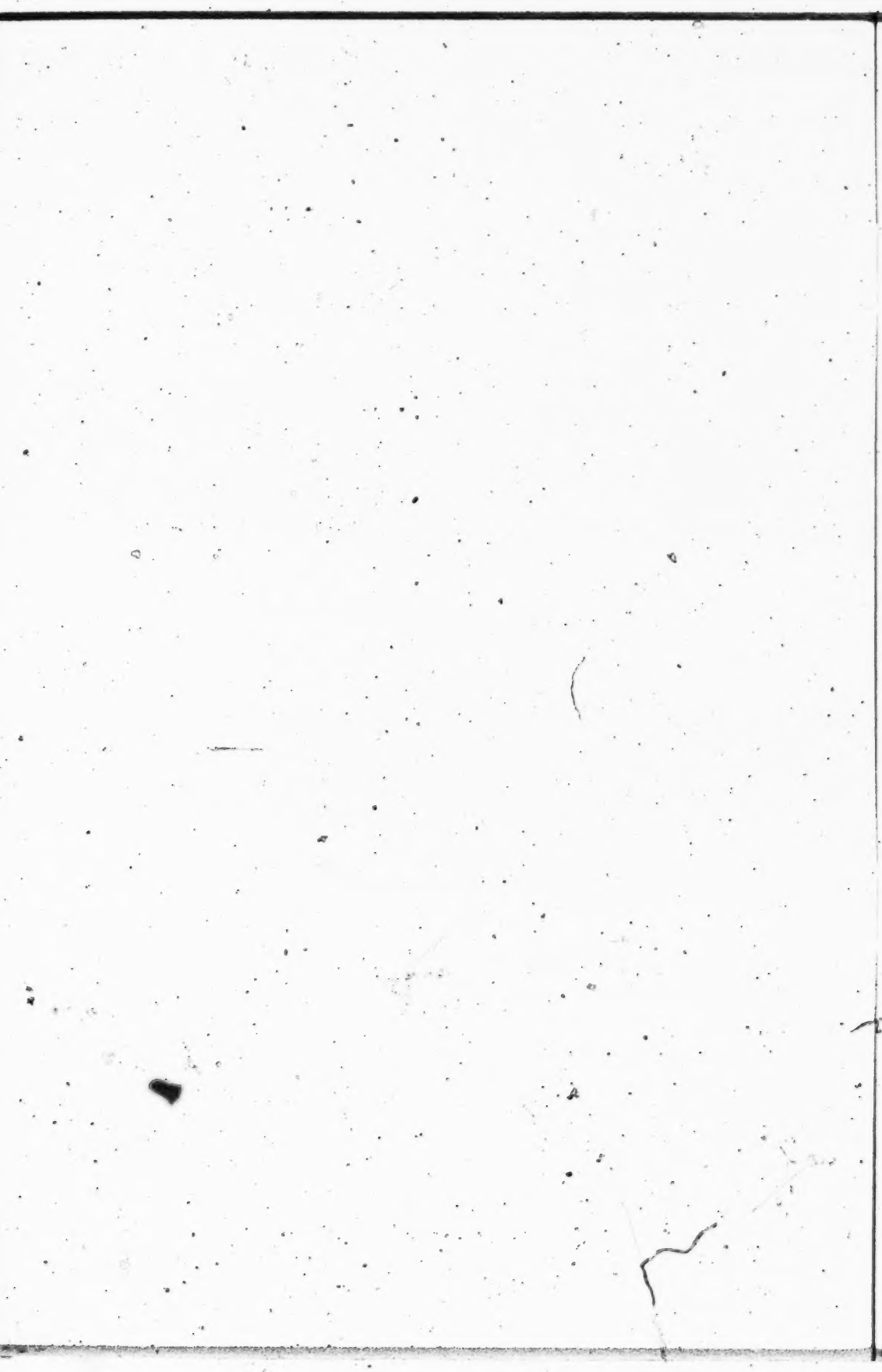
**CERTIFICATE OF COUNSEL**

I, Vernon B. Romney, counsel for the above named appellant, do hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

---

**VERNON B. ROMNEY**  
Attorney General, State of Utah  
Attorney for Appellant, Utah  
Public Service Commission

**July, 1969**



# IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

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No. 776

UTAH PUBLIC SERVICE COMMISSION,

*Appellant,*

*vs.*

EL PASO NATURAL GAS COMPANY, ET AL.,

*Appellees,*

---

ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF UTAH

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## **AFFIDAVIT OF PROOF OF SERVICE OF PETITION FOR REHEARING OF UTAH PUBLIC SERVICE COMMISSION**

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I, VERNON B. ROMNEY, being duly sworn, depose and say:

1. I am the Attorney General of the State of Utah and I am the attorney for the Utah Public Service Commission, appellant in the above entitled cause.

2. Each of the parties to the above entitled cause, whose names are set out below, has pursuant to Rule 33 of the Rules of the Supreme Court of the United States, been served with the foregoing Petition for Rehearing of the Utah Public Service Commission by placing a copy of the Petition for Rehearing of Utah Public Service Commission in an envelope addressed to each of the attorneys listed below for the parties listed below at his address listed below and by depositing each such envelope in the United States' mail with air mail postage prepaid or in case of local parties, regular mail postage prepaid, and by placing a copy of the foregoing Petition for Rehearing of Utah Public Service Commission in an envelope ad-

ressed to the Solicitor General, Department of Justice, Washington, D.C. and by depositing said envelope in the United States' mail with air mail postage prepaid.

3. In addition, a copy of the foregoing Petition for Re-hearing of Utah Public Service Commission has been placed in an envelope addressed to Richard A. Solomon, General Counsel, Federal Power Commission, Washington, D.C. 20426 and deposited in the United States' mail with air mail postage prepaid.

4. In addition, a copy of the foregoing Petition for Re-hearing of Utah Public Service Commission has been placed in an envelope addressed to the Honorable Hatfield Chilson, United States Courthouse, Denver, Colorado, and deposited in the United States' mail with air mail postage prepaid.

5. In addition, a copy of the foregoing Petition for Re-hearing of Utah Public Service Commission has been placed in an envelope addressed:

Richard A. Solomon  
General Counsel  
Federal Power Commission  
Washington, D.C. 20426

William M. Bennett  
35 Evergreen Drive  
Kentfield, California

John J. Flynn  
954 Military Drive  
Salt Lake City, Utah

I. Daniel Stewart, Jr.  
2900 Millicent Drive,  
Salt Lake City, Utah

and deposited in the United States' mail with air mail postage

prepaid, or in the case of local parties, regular mail postage prepaid.

**PLAINTIFF, UNITED STATES OF AMERICA:**

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Arizona Public Service Company  
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**Fabian & Clendenin**  
**Continental Bank Building**  
**Salt Lake City, Utah**

**Dated this \_\_\_\_\_ day of July, 1969.**

**VERNON B. ROMNEY**

**Attorney General, State of Utah**  
**Attorney for the Utah Public**  
**Service Commission, Appellant**

**Subscribed and sworn to before me this \_\_\_\_\_ day of July,**  
**1969.**

**Notary Public**

**Residing at Salt Lake City, Utah**

**My Commission Expires:**